

21 April 2016

BY ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

*Re: GN Docket No. 15-206
Notice of Ex Parte Presentation*

Dear Ms. Dortch:

Pursuant to 47 C.F.R § 1.1206(b), the North American Submarine Cable Association (“NASCA”) notifies the Commission of an *ex parte* presentation in the above-referenced proceeding. On April 19, 2016, Mike Tan (AT&T), Kurt Johnson (Pacific Crossing) and I, as counsel for NASCA, met in person or telephonically with Daudeline Meme, Legal Advisor to Commissioner Mignon Clyburn. During the meeting, we discussed the attached talking points, as well as NASCA’s strong support for the Commission’s proposal in this proceeding to create a clearinghouse for information about submarine cable systems landing in the United States.

Should you have any questions, please contact me by telephone at +1 202 730 1347 or by e-mail at slarson@hwglaw.com.

Respectfully submitted,



Susannah Larson

*Counsel for the
North American Submarine Cable Association*

Attachment

cc: Daudeline Meme



NORTH AMERICAN SUBMARINE CABLE ASSOCIATION VIEWS RE PROPOSED OUTAGE REPORTING REQUIREMENTS

1. NASCA remains concerned that the NPRM is premised on an erroneous assumption that there is a hidden submarine cable outage problem.

- The lack of outage reports under the existing voluntary system is due to a lack of reportable events.
- Data compiled by the International Cable Protection Committee show an average of approximately two faults per year in the U.S. territorial sea (which extends 12 nautical miles seaward from the shore) and exclusive economic zone (“EEZ,” which extends 200 nautical miles seaward from the U.S. coast) in the Atlantic Ocean and an average of one fault per year in the U.S. territorial sea and EEZ in the Pacific Ocean. A “fault” is an event requiring maintenance or repair to ensure continued useful service of the cable and may be caused by natural or man-made factors
- Most submarine cable operators control diverse capacity on other submarine cable systems strategies. Many have constructed ring-configuration systems with multiple segments serving the same route. And some still have satellite back-up.
- The Northern Marianas outage resulted from a lack of redundancies not found with other U.S. submarine cable infrastructure. No other cable currently serves the Guam-Marianas route. The operator of the existing cable had not repaired its back-up microwave system, which had been damaged in an earlier storm and had not made arrangements for satellite back-up. This issue will be remedied next year with the construction of DOCOMO Pacific’s new Atisa system.
- Submarine cable operators do not have retail customers. Their customers are sophisticated carriers, ISPs, and content providers that pursue their own redundancy and diversity strategies.

2. The purposes of the new reporting requirements remain insufficiently defined and lack a clear statutory basis.

- The NPRM fails to justify why submarine cable operators, unlike any other category of provider in NORS, should report outages that do not degrade the customer or end-user experience.
- The NPRM offers no legal basis for suggesting that the Commission should play a direct role in coordinating restoration and repair efforts.
- The Commission should focus on the principal risks to submarine cable infrastructure and the use of risk data to enhance (but not duplicate) interagency and interjurisdictional cable protection efforts and existing industry cable protection efforts.



3. To the extent still warranted, the NPRM’s proposed reporting requirements would require significant revision to make them workable.

- The proposed outage definition’s “30-minutes-or-greater” loss-criterion would capture mundane events. The “loss of 50 percent or more of a cable’s capacity” standard could not be meaningfully applied, as (1) operators measure traffic loss and (2) many systems have multiple segments and ring configurations.
- The NPRM’s “covered providers” proposal fails to account for how submarine cable operators operate, respond to faults, and are licensed by the Commission.
 - Not all joint licensees are equally affected by faults.
 - Most of these submarine cable facilities are located outside U.S. territory and managed and maintained by non-U.S. parties.
 - Many of these systems are owned by consortia—sometimes with dozens of mostly non-U.S. owners with varying interests in those systems—and governed by detailed agreements and procedures. AT&T, Sprint, and Verizon are each involved in more than a dozen consortium systems.
- The Initial Notification’s data and timing requirements are unreasonable and threaten to interfere with testing, repair vessel call-out, and customer restoration efforts during the busy period following discovery of a fault.
- The Interim Report is unnecessary, as it provides little information beyond the Initial Notification.
- The Commission should treat data submissions as proprietary and exempt from public disclosure.
- The Commission should reject any proposal to collect additional operational data.

4. The NPRM significantly underestimates the costs of the proposed reporting requirements and fails to address Paperwork Reduction Act requirements.

- The Commission’s estimate of an annual, industry-wide burden of \$8,000 requires significant upward revision to account for set-up, adjustment, and recurring costs (including adoption of new systems and technology, policies and procedures, and contractual arrangements; searching of data sources; and associated lawyering, particularly if there is to be joint-and-several liability for compliance).
- The proposed reporting requirements fail to satisfy OMB criteria for new information collections.



5. NASCA proposes a framework for more tailored reporting requirements.

- Reporting requirements should enhance continuity of communications; collect data allowing for identification of outage patterns and related incidents; account for realities of submarine cable geography and operations; avoid interfering with repair and traffic restoration; and account for realities of outage incident data gathering.
- *First*, the Commission should define an “outage” for the purpose of submarine cable reporting in terms of traffic loss and the impact on customers.
- *Second*, the Commission should require cable operators to submit an initial notification no earlier than 48 hours after discovery of the fault.
- *Third*, the Commission should allow each licensee or group of licensees for a particular cable system to determine for itself how best to handle the reporting obligation.

6. The Commission should adopt a minimum one-year transition period for any new reporting requirements in order to allow operators to adopt compliance systems and coordination mechanisms among consortium owners.

7. The record reflects overwhelming support for NASCA’s positions.

- Industry commenters overwhelmingly agree that the outage definition should be narrowly tailored and consistent with the realities of submarine cable ownership and operations.
- Those few commenters expressing support for Commission proposals were affected by the anomalous cable damage event in the Northern Marianas and fail to account for those realities of submarine cable ownership and operations, particularly the rarity of faults in the U.S. territorial sea and EEZ. Moreover, their concerns will be more effectively addressed through the deployment of new, redundant infrastructure in 2017.